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| GEORGIA SUTTON ROBERTS,<br>Appellant | : | Order Affirming Decision |
| v. | : | Docket No. IBIA 94-182-A |
| ANADARKO AREA DIRECTOR,<br>BUREAU OF INDIAN AFFAIRS,<br>Appellee | : | May 22, 1995 |

This is an appeal from an August 1, 1994, decision of the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the 1988 approval of a gift deed executed by Sallie Blackbear Sutton. The Area Director rejected a challenge to the approval brought by Georgia Sutton Roberts, who is one of Sutton's twelve children. For the reasons discussed below, the Board affirms the Area Director's decision.

On September 17, 1987, Sutton applied at the Concho Agency, BIA, to gift deed her 1/3 surface interest in a tract of land in Blaine County, Oklahoma, to her daughter, Ava Dushane Sutton Benson, who also owned an interest in the tract. On January 18, 1988, Sutton signed a gift deed for the tract. On the same day, she signed a statement reading in part:

> I am aware my undivided 1/3 surface interest has a value of $12,466.67. Being well aware of the value of this property and my interest in it, I still wish to continue with the Gift transaction. I understand fully this waiver means I will receive no compensation (monetary or otherwise) through the Concho Agency on the transfer of my interest to another individual.

The Superintendent approved the gift deed on January 28, 1988. Sutton died on July 8, 1988.

On February 7, 1994, appellant went to the Concho Agency, seeking to challenge the 1988 approval of the gift deed. In order to provide appellant with an appealable decision, the Superintendent prepared a statement describing the circumstances of the original approval. Appellant appealed the Superintendent's April 25, 1994, statement to the Area Director, who affirmed it on August 1, 1994.

It is apparent that BIA treated appellant's request as something in the nature of a request to cancel the 1988 gift deed, rather than as an untimely appeal of the 1988 approval. It appears that this was done in order to give appellant an opportunity to have her arguments heard. The

Board accepted BIA's apparent characterization of appellant's request as one for cancellation of the gift deed, in order to avoid a summary dismissal of this appeal on grounds of untimeliness. 1/

The Board did, however, require that appellant explain the reasons for her delay in seeking relief. In the notice of docketing for this appeal, the Board informed appellant that she must: "(1) show that the Area Director's decision was in error; (2) explain why she waited until 1994 to object to the gift transaction; and (3) show that she would have inherited an interest in this property from her mother but for the gift deed."

Appellant submitted a copy of the order determining heirs for Sutton's estate. The order shows that Sutton died intestate and that appellant was one of her heirs. Accordingly, appellant has complied with the third requirement established by the Board.

As to her reasons for delay, appellant states that she did not learn about the gift deed until long after it was approved and that, believing the matter would be resolved in the probate of her mother's estate, sought to challenge the gift deed at her mother's probate hearing. The suggestion is that it was the rejection of her challenge at the probate hearing that caused her to seek action from BIA. However, it is apparent that she went to the Agency about the matter before the probate hearing in her mother's estate, which was held on February 16, 1994. Although appellant is imprecise as to when she first learned about the gift deed, the Board again gives her the benefit of the doubt and assumes that she did not learn of it until preparations were being made for her mother's probate hearing.

The Board next considers whether appellant has shown error in the Area Director's decision. Appellant first contends that Sutton did not intend to make a gift to Ava Benson but, rather, to sell the property to her in order to obtain money. She contends that Benson promised to give Sutton a car, to provide her a place to live, and to pay for a trip to Wyoming, but failed to carry through with those promises. Further, appellant contends that the transaction was "a deliberate act of deception on the part of Sallie Sutton and Ava Benson" (Notice of Appeal at 1). According to appellant, Sutton "was very much aware of the fact that the fastest way to conclude this sale of land was to deceive the agency into thinking it was a gift, while indeed it was not." (Emphasis in original.) Id.

The only support appellant provides for her allegation that Sutton intended to sell, rather than give, her property to Benson is a statement at page 1 of her opening brief that Sutton "made this offer to me and at least two other heirs, therefore, I know it to be a sale." However, because appellant was, according to her own statement, unaware of the transaction at the time it occurred, she clearly had no firsthand knowledge of the specific arrangements with Benson. Appellant's bare allegation is insufficient to prove that Sutton intended the transaction to be a sale.

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1/ Appellant's original request to the Agency was apparently not made in writing. The Board therefore gave appellant the benefit of the doubt with respect to the nature of her request.

Appellant also contends that the Superintendent should not have approved the gift deed because he should have realized Sutton was in poor health at the time and was using poor judgment. Appellant does not contend that Sutton failed to understand what she was doing. In fact, she acknowledges that Sutton was "aware and alert right up to the time of her death." Id. Rather, appellant's argument appears to be that, even though Sutton understood what she was doing, the Superintendent should have refused to carry out her wishes.

As long as the Superintendent was satisfied that Sutton understood what she was doing and was not acting against her own best interests, there was no basis for him to substitute his judgment for Sutton's. Not only does appellant concede that Sutton understood what she was doing, but the record also supports that conclusion. In addition to the documents signed by Sutton concerning this transaction, the record contains evidence that she had disposed of eleven other interests between 1961 and 1988. This fact suggests that she was familiar with the process and the issues related to the disposition of her property. Moreover, she was giving the property to a daughter who already owned an interest in the tract. Thus, the disposition was natural and reasonable on its face. 2/

Appellant does not specifically contend that the gift deed transaction was not in Sutton's best interest, although her contention that Sutton exercised poor judgment might be construed as such. As appellant was advised in the notice of docketing, however, the burden was upon her to show error in the Area Director's decision. Neither the contention that Sutton used poor judgment, nor any of appellant's other contentions, are sufficient to show that the Area Director's decision was in error or that the Superintendent's 1988 approval of the gift deed was improper.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's August 1, 1994, decision is affirmed.

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Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge

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2/ It is not unusual for elderly Indians to gift deed their property to relatives, rather than let it pass through probate. If it accomplishes nothing else, this procedure avoids further fractionation of the property.